



UN-GLOBE POSITION PAPER ON SAME-SEX UNIONS – September 2013

The Present System

The UN Common System adheres to the principle that staff members are international civil servants (“international civil servants must remain independent of any authority outside their organization”¹) and should have the same conditions of service regardless of their nationality (equal pay for work of equal value). The current practice of determining personal status for staff members in same-sex unions² by consulting their country of nationality is contrary to these principles. It results in differential treatment amongst staff members depending on their country of nationality, and whether they are in a same-sex union, or in an opposite-sex union.

UN-GLOBE finds the present system untenable and discriminatory.

When it comes to same-sex unions, under the present system, staff members who have the “wrong” passport will always be considered *single* in personal status even if they are in a valid, legal union. The fact that their legal union has been recognized by a legal authority, such as by the staff member’s country of residence, is not enough. What additionally matters is the law in existence in the staff member’s country of nationality. It is the latter that ultimately determines whether the staff member is considered *single* or *married (or equivalent)* in personal status.

If the staff member’s country of nationality has a discriminatory law in place that does not allow gay, lesbian, bisexual, and transgender (LGBT) individuals to exercise a right to form a legal union, the UN system then essentially incorporates this discriminatory law from the country into its human resources policies by also refusing to grant an LGBT individual *married (or equivalent)* status. This can lead then to the untenable situation whereby a staff member is legally married to a same-sex partner, married, for example, in the staff member’s duty station, such as Montreal, yet considered *single* by his or her organization.

The Effects of the Present System on Mobility

Having one's actual family situation ignored, and being considered administratively "single" instead, simply because of one's country of nationality damages morale and has serious financial consequences. . This is particularly the case when it comes to mobility.

The UN System has, or is moving towards, a mandatory mobility policy which requires staff members to relocate periodically. The mechanisms in place to assist staff in relocating with their families (removal allowances, rental subsidies, home leave, health and malicious acts insurance all tailored accordingly) cannot be applied to those staff members whose legal partners (and/or families) are not officially recognized by the employing organization. In such situations, the designation of a duty station as family or non-family is not applicable, because the LGBT staff member's personal status is *single* on paper, whatever it might be in reality. The staff member will then face the difficulty of trying to bring a non-recognized legal partner (and possibly children) to a new duty station, without any of the entitlements he or she would otherwise be eligible for. Among the daunting tasks the LGBT staff member would face are obtaining residence permits, and providing appropriate security and health care to the spouse or domestic partner (and/or family). In countries where homophobia is prevalent— and in 76 countries around the world it is essentially illegal to be gay— this would not only be impossible, but quite dangerous. Given these difficulties, LGBT staff members may choose to keep dual households

¹ “Standards of Conduct for the International Civil Service” (2013), para. 8, issued by the International Civil Service Commission.

² The term "same-sex union" is used here to describe same-sex marriages and domestic partnerships. The distinction between marriages and domestic partnerships is of no consequence for UN system organizations, which, for administrative and benefits/allowances purposes, regard them as one and the same. It should also be noted that this is what is most fair for LGBT staff members, as they have little choice as to what their type of union is to be. Countries that allow same-sex unions, about 31 countries currently, mostly offer marriages, or domestic partnerships, but not a choice between both.

instead, even when assigned to a family duty station, or may refuse to move altogether. Their careers could then suffer, as could their morale. They may opt instead to leave and work elsewhere, harming the UN System's competitiveness as an employer, and its goal to attract the most qualified employees.

Two Alternatives to the Present System

Two alternative policies to the current practice exist and are already in place in several international organizations within the UN System.

Within the UN System, UNAIDS, and UNESCO have adopted a *Recognition of Personal Status Based on the Jurisdiction of the Location of the Ceremony/Registration* policy (the Jurisdiction approach). And the World Bank and the IMF have in place a *Recognition of Unions Based on Pre-determined Criteria and an Affidavit* (the Affidavit approach).

Under the Jurisdiction approach, a same-sex union legally recognized by an authority is the basis to amend a staff member's personal status from *single* to *married (or equivalent)*. The recognizing authority need not necessarily be the staff member's country of nationality. It can be the country of residence.

Under the Affidavit approach, a staff member would present evidence according to pre-determined criteria that he or she is in a committed union, and sign a statement that not only is this so, but that he or she has the expectation that this will remain so. The staff member would then be granted *married (or equivalent)* status.

UN-GLOBE urges the UN System to study these two policies as the way forward.

At the same time, **UN-GLOBE clearly and unambiguously endorses the Affidavit approach as the most inclusive and most fair, and urges the UN System to adopt it, with the Jurisdiction approach as an alternative.**

Potential Problems with the Jurisdiction Approach

UN-GLOBE would like to highlight potential problems with the Jurisdiction approach.

Under the Jurisdiction approach, a staff member who wishes to exercise a right to form a legal union would be required to travel to a country that performs them. However, the expenses involved, or the visas required may prevent a staff member from doing so. In addition, national or local authorities may impose residence requirements before recognizing a same-sex union, further limiting the options of staff members. Divorce laws may further complicate the issue and make it practically impossible to dissolve a legal union if a long period of residence is required before nullification.

UN-GLOBE fears that the Jurisdiction approach particularly disadvantages staff members of lesser means who cannot afford travel and legal expenses, and those who would face challenges securing visas.

The Affidavit Approach - Why?

UN-GLOBE believes that the affidavit approach is the most inclusive and most fair, and should be available for staff members. It has been in use at the World Bank and IMF since the early 1990s, was considered suitable for use throughout the UN system by the Chief Executives Board for Coordination (CEB) in 1998, and is in routine use in the UN system for Australian and US employees, at the express request of their countries of nationality.

The desire to be in a legal union, the desire to start a family, these are basic human desires, even needs, that many of us share.

Yet around the world, discriminatory attitudes towards LGBT individuals are preventing them from fulfilling their basic desires and needs. This has obvious negative consequences.

As the United Nations High Commissioner for Human Rights, Navi Pillay has stated on the occasion of the International Day against Homophobia and Transphobia in 2013:

"The absence of legal recognition of same-sex relationships is yet another source of discrimination, hardship and insecurity for many lesbian, gay and bisexual people, as well as for their families, which include millions of children growing up with parents of the same sex."

The Affidavit approach, we believe, ensures that all LGBT staff members, no matter what country they are from, or their available means, can exercise these most basic desires and needs.

Furthermore, we, at UN-GLOBE, believe that the momentum is shifting, if it has not already, towards recognition of same-sex unions. The recent decision of the United States Supreme Court declaring the Defense of Marriage Act as unconstitutional is but one more step towards this direction. So are laws recently adopted in Argentina, Uruguay, South Africa, New Zealand, and France allowing same-sex unions. As are recent steps by the European Parliament to grant equal rights to married and registered couples without distinction.³

By doing little, the United Nations System, we believe, risks falling behind, both as an employer and as a standard setter—its response antiquated at a time when the fight against non-discrimination and for the full equality of all LGBT individuals around the world is one of the human rights fights of our lifetimes.

This is particularly jarring as the United Nations Secretary-General Ban Ki-moon has been outspoken in this particular fight.

The UN system will be seen as not practising what it preaches.

The Standards of Conduct for the International Civil Service can be of guidance. They state: “The values that are enshrined in the United Nations organizations must also be those that guide international civil servants in all their actions: fundamental human rights, social justice, the dignity and worth of the human person and respect for the equal rights of men and women and of nations great and small.”

The Affidavit approach based on pre-determined criteria, we believe, is the way forward, and should be available.

At the same time, unions under the Affidavit approach should be granted the same rights, benefits and entitlements available under the *married (or equivalent)* personal status.

UN-GLOBE, based on years of experience dealing with this matter, and having heard from countless of same-sex couples is ready to offer advice and guidance on the pre-determined criteria to be established in order to make the Affidavit approach a reality within the UN system. And to partner with any working group or individual tasked with drafting this criteria.

The 12-month co-habitation requirement, present in the World Bank / IMF list of criteria, for example, can be challenging for international civil servants, who because of the nature of their work must be ready to serve in any corner of the world. Coupled with a mandatory mobility scheme, this can mean that an LGBT staff member can spend years serving in one of the 76 countries that criminalize homosexual acts, for example, without an opportunity to live for 12 consecutive months with his or her partner— whether it is because co-habitation is inadvisable for security issues, or because visas cannot be secured for one’s partners and/or families, as described before. The chance to fulfil this requirement may only come once assigned to a duty station classified in the H category by the International Civil Service Commission, a duty station such as New York or Geneva. This may not happen for a long time, if at all, or if it does happen, the staff member would have to go through the relocation process under *single* status.

In summary, recognizing the unions of same sex couples is not only a matter of non-discrimination and equality, it is also a key step towards recruiting and retaining the most qualified LGBT staff members at a time when the fight for the respect of human rights of LGBT individuals is translating into human resources policies that are fully inclusive— an inclusiveness that cannot be said to be applicable for LGBT staff members in many of the organizations of the UN system when their unions are not being recognized.

UN-GLOBE, as a staff group representing lesbian, gay, bisexual and transexual staff members throughout the UN system and its peacekeeping operations, stands ready to partner with any organization to make the position stated here a reality.

³ <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0254&language=EN>